

(1919) 11 BOM CK 0030

Bombay High Court

Case No: Second Appeal No. 226 of 1918

Hari Raghunath Patvardhan

APPELLANT

Vs

Antaji Bhikaji Patvardhan

RESPONDENT

Date of Decision: Nov. 19, 1919**Citation:** (1920) 22 BOMLR 334**Hon'ble Judges:** Shah, J; Crump, J**Bench:** Division Bench**Final Decision:** Dismissed

Judgement

Shah, J.

This appeal arises out of a suit brought by certain villagers with leave under Order I, Rule 8, for a declaration that the temple of Ganpati in question was a public temple and for an injunction restraining the defendant from removing the image of Ganpati to another adjoining building put up by him, The plaintiffs, who represented the villagers, alleged that this was an old temple of Ganpati which was not the private property of the defendant, that the defendant was about to remove the image to another building which he had no right to do and which, they alleged, was contrary to their sentiments and religious belief. The defendant pleaded that the temple was a private temple, that he had been in management of the temple for many years, that the temple building was in a dilapidated condition and that he had put up a new building on his own land where he wanted to instal the image after removing it from the old temple. He contended in effect that as the manager of the temple he had a right to do so.

2. The trial Court found that the temple was a public temple, that the defendant was the manager of the temple and that in view of the omission of the villagers to effect the necessary repairs in the old building which was in a dilapidated condition the defendant was justified in putting up a "new building for the location of the image. It was found that the land on which the new building was put up by the defendant belonged to him; but in the course of the proceedings the defendant expressed his

willingness to dedicate the land with the building to the temple and agreed to treat the old building and the new building on the same footing as a public temple. The trial Court incorporated this undertaking on the part of the defendant in the decree and refused to grant the injunction which the plaintiffs had prayed for. In appeal the learned District Judge came to the conclusion that the defendant had no right as manager to remove the image from the present temple to the new building, In view however of the fact that the existing temple had fallen into disrepairs the plaintiffs agreed to deposit Rs. 1,500 with a, view to effect the necessary repairs, and a decree on that basis was passed restraining the defendant from removing the image to the new building.

3. In the appeal before us it has been urged on behalf of the defendant that the plaintiffs have taken up an unnecessarily obstructive attitude and that in view of the fact that he is willing to dedicate the new building to the temple there should be no objection to the image being installed in that building. On the other hand the plaintiffs urge that the defendant has been actuated by an indirect motive in thus removing the image from its present position to a building which has been erected by him. We are not, however, concerned in this litigation with the motives of either side. It may be that the defendant has acted only in the interests of the temple in putting up a building on his own land with the intention of removing the image to that building and of duly installing it in that building. It may be that the plaintiffs have not been so far diligent in seeing that the present building was properly repaired and that they may have some animus against the defendant in refusing his offer to dedicate the new building to the temple. We are concerned in this appeal only with the question of law which has been raised on behalf of the defendant that as a manager he is entitled to remove the image and to instal it in the new building. It is common ground now that the existing temple is an ancient public temple. It is also common ground that the defendant has been the manager of this temple for a number of years. It is not disputed that the existing building is in a ruinous condition and that it may be that for the purpose of effecting the necessary repairs the image may have to be temporarily removed. Still the question is whether the defendant as manager is entitled to remove the image with a view to its installation in another building which is near the existing building. Taking the most liberal view of the powers of the manager I do not think that as the manager of a public temple he can do what he claims the power to do, viz., to remove the image from its present position and to instal it in the new building. The image is consecrated in its present position for a number of years and there is the existing temple. To remove the image from that temple and to instal it in another building would be practically putting up a new temple in place of the existing temple. Whatever may be the occasions on which the installation of a new image as a substitute for the old may be allowable according to the Hindu law, it is not shown on behalf of the defendant that the ruinous condition of the existing building is a ground for practically removing the image from its present place to a new place permanently. We are not

concerned in this suit with the question of the temporary removal which may be necessary when the existing building is repaired. The defendant claims the right to instal it in the new building permanently, and I do not think that as a manager he could do so, particularly when he is not supported by all the worshippers of the temple in taking that step. I am clearly of opinion that the view which the District Judge has taken in this case of the powers of the manager is right and that the decree passed by him under the circumstances is correct. In coming to this conclusion I have not overlooked the fact that in the appeal before us some of the villagers have supported the defendant in the position which he has taken up,

4. I would confirm the decree of the lower appellate Court and dismiss the appeal.

5. The appellant to pay the costs of the plaintiffs-respondents. The other respondents who have been added here on the application of Mr. Sathaye must bear their own costs.

Crump, J.

6. I concur.